

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WENDELL D. HARRELL and U.S. POSTAL SERVICE,
POST OFFICE, Knoxville, Tenn.

*Docket No. 96-928; Submitted on the Record;
Issued January 21, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty.

The Board has duly reviewed the record on appeal and finds that the evidence is insufficient to establish that appellant sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.²

Appellant attributes his congestive heart failure and cardiomyopathy to a virus he believes he contracted in the performance of duty. This exposure, however, is not established by the record. At the hearing held before an Office hearing representative on August 2, 1995, appellant noted the difficulty in establishing such an exposure. A similar difficulty arose in the case of *Frederick H. Coward*,³ wherein appellant attributed his viral infectious hepatitis to exposure in Guam while on temporary duty. Appellant's gastroenterologist reported that Guam was the "most likely source" of the hepatitis and that this was his "best clinical guess." The physician also reported that appellant was one of numerous medical cases "where we cannot prove the source for certain." The Board found that this evidence was speculative and equivocal and insufficient to discharge appellant's burden of proof.

¹ 5 U.S.C. §§ 8101-8193.

² See generally *Abe E. Scott*, 45 ECAB 164 (1993), *John J. Carlone*, 41 ECAB 354 (1989); see also 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(a)(15)-(16) ("traumatic injury" and "occupational disease or illness" defined).

³ 41 ECAB 843, 853 (1990).

In this case, appellant submitted evidence from his family practitioner, Dr. Christopher E. Sawyer, substantiating that he saw appellant on March 17, 1986 (following the asserted exposure) with a two-week history of chest congestion, orthopnea and shortness of breath. Symptoms of lower extremity edema and increased orthopnea arose in the few days before examination. Dr. Sawyer reported that appellant appeared to be in heart failure, “rule out cardiomyopathy secondary to diabetes, rule out secondary to ischemia with coronary artery disease, rule out idiopathic.” On January 13, 1995 Dr. Sawyer reported that appellant was seen on March 17, 1986 with a four-week history of a “viral-type illness.”

Although this evidence supports that appellant showed symptoms of a viral-type illness during the training period in question, it does not establish that appellant contracted a viral-type illness in the course of his employment. It is well established that the mere fact that a condition manifests itself or worsens during a period of federal employment does not raise an inference of causal relationship between the two.⁴ Further, appellant testified at the August 2, 1995 hearing that he first started coughing and hacking after returning to the training center from a trip home. This trip home brings into consideration possible exposures outside the course of appellant’s employment during the period in question, which underscores the uncertainty concerning the etiology of the symptoms Dr. Sawyer reported. In the final analysis, the evidence of record, which is more speculative and uncertain than was the evidence in *Frederick H. Coward*, must be considered insufficient to support a finding that appellant contracted a virus in the course of his federal employment.

Turning to the element of causal relationship, Dr. Randall D. Towne, a Board-certified internist specializing in cardiovascular diseases, reported that appellant had an established history of idiopathic and dilated cardiomyopathy “of unclear etiology, presumably viral.” Dr. Towne stated that it was appellant who suggested that he caught an upper respiratory tract infection at work. Noting that appellant had a known Type II diabetes mellitus with nephropathy, proteinuria, retinopathy and neuropathy, Dr. Towne stated:

“His cardiomyopathy may also be on the basis of mild vessel disease, seen in our diabetes patients. The letter received from our office suggested substantiating a viral etiology for his idiopathic cardiomyopathy. As you know, it is not possible for us to specifically date the time and/or exposure. The etiology of his cardiomyopathy is indeed idiopathic and we can only presume it is secondary to a viral [sic] and/or longstanding diabetes mellitus.”

Even if it were accepted that appellant contracted a virus in the course of his employment, a fact by no means established here, the medical opinion evidence submitted in this case is uncertain whether appellant’s cardiomyopathy is secondary to such a virus or to his long-standing diabetes mellitus. In this regard, the Board notes that the latter condition is well established while the former is not.⁵ Given Dr. Towne’s report that appellant’s cardiomyopathy

⁴ *Steven R. Piper*, 39 ECAB 312 (1987).

⁵ Though Dr. Sawyer would later report that appellant had a four-week history of a “viral-type illness” during the period in question, his contemporaneous report made no mention of such a history.

was indeed idiopathic, and given his inability to relate this condition to a viral contraction with any degree of medical certainty, the Board finds that the medical evidence is too uncertain to establish the element of causal relationship.

The Board has held that in cases involving rather obscure etiology, where the relative circumstances are such as to strongly suggest a cause-and-effect relationship, such relative circumstances may be relied upon to support an award of compensation.⁶ The “relative circumstances” doctrine, however, was designed to encompass situations in which the following four factors are present: a condition the etiopathogenesis of which is in doubt; the occurrence of a dramatic incident; the onset of symptoms immediately following the incident and continuing thereafter; and support by some medical evidence.⁷ This case lacks a dramatic incident and supporting medical evidence and therefore it would be inappropriate to invoke the relative circumstances doctrine.

Because the evidence in this case is too speculative to establish the exposure alleged and too uncertain to support the element of causal relationship, the Board will affirm the Office of Workers’ Compensation Programs’ February 3, 1995 decision and September 29, 1995 decision, finalized October 2, 1995 denying appellant’s claim.

⁶ *Clinton K. Yingling, Jr.*, 4 ECAB 529 (1952).

⁷ *Elsbeth Severin (Nicholas Severin)*, 9 ECAB 91 (1956). *But see Alice E. Nielsen*, 8 ECAB 413 (1955) (in a rare case carving out a limited exception to the rule that the development of a disease concurrently with the employment is not sufficient to warrant the inference of causal relationship between the disease and the employment, a majority of the Board found that “the greater probabilities” favored the claimant’s having contracted her skin condition as an incidence of her employment).

The September 29, 1995 decision, finalized October 2, 1995, and February 3, 1995 decision of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
January 21, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member